## UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

FRED MEYER STORES, INC. AND ALLIED EMPLOYERS

and

Cases 19-CA-032908 19-CA-033052

UNITED FOOD AND COMMERCIAL WORKERS LOCAL 367, AFFILIATED WITH UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION

## ORDER<sup>1</sup>

The Charging Party Union's request for special permission to appeal the rulings of Administrative Law Judge Gregory Meyerson denying in part its petition to revoke Respondent's subpoena duces tecum B-648027 is granted. On the merits, the Union's appeal is granted in part and denied in part.

The Union's appeal is granted with respect to the judge's ruling on paragraph 40 of the subpoena. In denying the petition to revoke with regard to paragraph 40, the judge ruled that the Union was required to produce two position statements submitted by its attorney to the Region during the Region's investigation of the charges filed by the Union. We find that, in so ruling, the judge clearly erred. It is well established that the position statements of charging parties are privileged from disclosure under the work product doctrine, and a charging party does not waive that privilege by submitting position statement to the General Counsel during an investigation. See *Kaiser Aluminum & Chemical Corp.*, 339 NLRB 829, 829 (2003). In such circumstances, a charging party's position statements can only be disclosed if the party requesting the

<sup>&</sup>lt;sup>1</sup> The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

statements can demonstrate a "substantial need" for the statement. See id. Here, the Union submitted its position statements to the General Counsel during an investigation, and the Respondents have not shown a substantial need for the statements. The judge's ruling is therefore reversed.

The Union's appeal is denied with respect to the judge's ruling on paragraph 1 of the subpoena, which requests copies of the Union's constitution and bylaws. In this regard, the Union has failed to demonstrate that the judge clearly erred in denying its motion to quash this paragraph of the subpoena. Contrary to the Union's contentions, the judge found that the Respondent had made an adequate showing that the constitution and bylaws were potentially relevant to its defenses. In addition, the Union has failed to establish that the judge erred in finding that there is nothing confidential in the documents and that the Union would not be prejudiced by the disclosure of these documents. Accordingly, the Union is directed to comply with this paragraph of the subpoena.

Dated, Washington, D.C., September 24, 2012.

MARK GASTON PEARCE, CHAIRMAN

RICHARD F. GRIFFIN, JR., MEMBER

SHARON BLOCK, MEMBER